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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re T.G. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARY G. et al.,

Defendants and Appellants.

D065650

(Super. Ct. No. J516182A-D)

APPEALS from findings and orders of the Superior Court of San Diego County,
Kenneth J. Medel, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and
Appellant Mary G.

Grace Clark, under appointment by the Court of Appeal, for Defendant and
Appellant A.G.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Christopher Dawood, Deputy County Counsel, for Plaintiff and Respondent.

Mary G. and A.G. appeal findings and orders adjudicating their children dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b)¹ and removing the children from their custody under section 361, subdivision (c)(1). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mary G. has four children, Ta.B., Ti.B., T.G. and A.G., Jr. (collectively, the children), who are now ages 16, 12, seven and six years old, respectively. Mary's husband, A.G., is the father of the two youngest children and has acted as a father to Ta.B. and Ti.B. (together, the older children) for approximately 11 years.² A.G. has a history of incarceration on felony robbery convictions and parole violations.

Ta.B. and Ti.B. were adjudicated dependents of the juvenile court in March 2006 after A.G. physically abused Ta.B. by grabbing her face, striking her with a belt and spanking her so hard that it hurt to sit down. Ta.B. had bruises near her armpit and said that A.G. had grabbed her. Mary denied that A.G. physically abused Ta.B. She acknowledged that she had a history of relationships with men who were abusive to her

¹ All further statutory references are to the Welfare and Institutions Code.

² The fathers of the two oldest children have not been involved in their lives. Ta.B. and Ti.B. do not know their biological fathers and refer to A.G. as "dad." In this opinion, for convenience and not in recognition of legal status, we refer to A.G. as their father.

and her children; however, she insisted A.G. was not abusive. Mary completed her case plan and A.G. rejoined the family when he was released from prison. The family appeared to be doing well and the court dismissed dependency jurisdiction in May 2007.

In November 2013, the San Diego County Health and Human Services Agency (Agency) detained the children in protective custody after Mary and A.G. had a violent confrontation in the children's presence, and Mary suffered a severe laceration to her nose.

The court held a contested jurisdiction and disposition hearing on March 7, 2014, and admitted the Agency's reports in evidence. Mary and A.G. denied the allegations but did not present any affirmative evidence.

The Agency reported that Ta.B., who was 15 years old, told the social worker that Mary and A.G. were arguing on Sunday and Monday, November 10 and 11, 2013.³ On the morning of November 11, which was a school holiday, she and her siblings saw a fight between their parents. Ta.B. had removed her cochlear implants and could not hear. However, she could feel the vibration on the floor and saw her parents fighting in the hallway. A.G. had his hands around her mother's neck and then he punched her in the face, causing her nose to bleed. Their mother took them to their aunt's house and went to the hospital. When their mother returned that evening, A.G. was with her. Ta.B. said her mother promised her that the fighting would stop and she would never drink again.

³ Ta.B. is deaf. She communicates using American Sign Language.

Eleven-year-old Ti.B. said her parents drank too much and were drinking on Sunday or Monday. They got into a fight. Her mother went into the bathroom and her father kicked the door, breaking the doorjamb. Ti.B. showed the social worker where A.G. damaged the doorjamb. Ti.B. heard her mother yelling at her father when she discovered he had been cheating on her. Her mother started drinking liquor. Her father grabbed her mother and punched her in the nose.

T.G. and A.G., Jr., who were then ages 7 and 5, denied witnessing their parents fight. They each said their mother told them she hurt her nose in a car accident.

Mary told the social worker that she was injured in a car accident in Orange County. She went to Grossmont Hospital for treatment. Mary had bruises on her arms. She said she was bruised while at work. The following day, Mary told the social worker she had been injured in a bar fight. When the social worker asked about Mary's reported car accident, Mary claimed she had been in a car accident and a bar fight.

A.G. would not discuss the incident with the social worker.

The social worker met with the children again approximately two weeks after they were detained. Ta.B. said her parents were fighting and gave an account consistent with her first conversation with the social worker. Ti.B. said her parents had not been fighting and her mother had been in a car accident. A.G., Jr., said his parents had been in a car accident and his dad's hand was bleeding.

The social worker met with Mary and A.G. on November 27. Mary denied any domestic violence. She denied being in a bar fight. She said she was in a car accident in

Los Angeles. A.G. had a cut on his left knuckle by his ring finger. He said he had been bit by a dog.

The children's aunt reported Mary brought the children to her home at approximately 7:00 a.m. on November 11. Mary's nose was open and the bone was visible. When Mary and A.G. returned around 8:30 p.m., Mary had stitches in her nose and her face was very swollen. Mary said she had been in a bar fight.

A visitation monitor reported that A.G. smelled like marijuana smoke when he visited the children. A.G. refused to drug test.

In January 2014, Ta.B. told the social worker she loved her mom and dad. They never fought with each other. She had been wrong when she said they were in a fight. She forgot that her mother really was hurt in a car accident.

According to Ta.B.'s therapist, Ta.B. admitted lying to the social worker about the car accident so she and her siblings could return home. Ta.B. said both parents encouraged her to lie to the social worker and the court. Ta.B. was afraid of her parents' reaction when she told the truth. Her mother was mad at her and had yelled at her. The therapist said as a result of those stressors and previous exposure to abuse, Ta.B. was struggling with anxiety.

The social worker did not believe it was safe to return the children to their parents' care. The parents had an incident of domestic violence in the children's presence that resulted in a significant injury to their mother. They denied any domestic violence and made contradictory and misleading statements to the social worker. They were not willing to communicate with the Agency. The social worker provided information about

voluntary services to Mary, but Mary did not engage in services. In addition, the family had a history of child welfare referrals. Ta.B. and Ti.B. were adjudicated dependents of the juvenile court in March 2006 after A.G. physically abused Ta.B. A.G. had several felony convictions for robbery, the most recent in 2010.

The court sustained the jurisdictional allegations under section 300, subdivision (b) by clear and convincing evidence. The court removed the children from the physical custody of the parents and placed them with their paternal grandmother.

DISCUSSION

A

Mary and A.G.⁴ contend there is not substantial evidence to support jurisdiction based on a single episode of domestic violence. They assert there is not substantial evidence to support the dispositional order removing the children from their care or alternatively, from Mary's care. They also contend reversal is required because the court did not make the findings required for removal under section 361.5, subdivision (c)(1).

B

Jurisdiction

At the jurisdiction hearing, the court considers only the question whether the child is described by one or more subdivisions in section 300. Under section 300, subdivision (b), the Agency must show that the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure of his or her

⁴ Mary and A.G. join in each other's arguments.

parent to adequately supervise or protect the child. "The three elements for a section 300, subdivision (b) finding are: '(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the [child], or a "substantial risk" of such harm or illness.' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395-1396.) The third element requires a showing there is an ongoing, substantial risk of physical harm or illness. (*Id.* at p. 1396.)

We review the trial court's findings to determine whether there is substantial evidence in the record to support the findings. We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) We draw all legitimate and reasonable inferences in support of the judgment. (*Candari v. Los Angeles Unified School Dist.* (2011) 193 Cal.App.4th 402, 408.)

Mary and A.G. contend this case is similar to *In re J.N.* (2010) 181 Cal.App.4th 1010, 1026 (*J.N.*), in which the reviewing court reversed a jurisdictional finding that was based on a single episode of endangering conduct, and *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (*Daisy H.*), in which the reviewing court reversed a jurisdictional finding where there was no evidence of an ongoing threat of physical harm to the children from domestic violence.

This case is distinguishable from *J.N.* and *Daisy H.* *Daisy H.* involved allegations of domestic violence that had occurred at least two years, and probably seven years, prior to the jurisdictional hearing. There was no evidence that any of the children were

exposed to the past violence between their parents and there was no evidence of ongoing violence between the parents. In addition, the parents were separated and obtaining a dissolution of their marriage at the time of the jurisdictional hearing. Thus, under those circumstances, there was not a continuing risk of physical harm or illness to the children. (*Daisy H.*, *supra*, 192 Cal.App.4th at pp. 715, 717.)

J.N. involved a serious incident in which the children's parents had been drinking and were involved in an automobile accident. The children were injured in the accident. There was no evidence that either parent had an ongoing substance abuse problem. (*J.N.*, *supra*, 181 Cal.App.4th at p. 1022.) In addition, unlike this case, the parents were remorseful and cooperative with services. (*Id.* at p. 1026.)

In addition to the factual differences between *J.N.* and this case, *J.N.* does not support the parents' argument that a single episode of domestic violence is insufficient to sustain a jurisdictional finding under section 300, subdivision (b). Contrary to the parents' assertion, the *J.N.* court said, "The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances." (*J.N.*, *supra*, 181 Cal.App.4th at p. 1026.) "In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and

probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident." (*Id.* at pp. 1025-1026.)

Here, the record shows that A.G. assaulted Mary in the presence of the children. He put his hands around her neck, broke down the bathroom door and punched her in the face. The force of the blow split her nose to the bone and required emergency medical treatment. The parents denied any domestic violence, lied to the social worker, a police officer, the younger children and the children's aunt. They coached the older children to lie. The older children said their parents had been drinking before the incident. Ta.B. said her mother promised her the fighting would stop and she would never drink again. Mary's promise to her daughter allows the reasonable inference the parents had an ongoing pattern of drinking and fighting. Mary had a history of having relationships with men who were abusive to her and her children. Mary and A.G. displayed no understanding of the conduct that had endangered their children. Their attitude was that of denial. They made no effort to participate in offered services, or to take other steps to address their problematic conduct, after their children were detained in protective custody. The court could reasonably conclude that the serious incident of domestic violence coupled with the parents' willingness to lie about the incident and refusal to cooperate with the social worker created an ongoing and substantial risk of serious physical harm or illness to the children. There is ample evidence to support the court's findings under section 300, subdivision (b).

C

Dispositional Findings

A dependent child may not be taken from the physical custody of the parent under section 361 unless the court finds there is clear and convincing evidence that there is or would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and that there are no reasonable means to protect the child's physical health without removing the child. (§ 361, subd. (c)(1).)

In reviewing the court's findings and orders under section 361, subdivision (c), we employ the substantial evidence test, bearing in mind, however, the heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

We are not persuaded by the parents' claim reversal is required because the court did not make the findings required under section 361, subdivision (c)(1). The record shows that the court specifically cited section 361, subdivision (c)(1), when it removed the older children from Mary's custody and the younger children from Mary's and A.G.'s custody. Those findings are supported by substantial evidence. In view of the serious incident of domestic violence between the parents, the court reasonably determined it could not safely allow the children to remain in the parents' care. The parents refused to acknowledge the incident or take any steps to ameliorate the problem. The record also supports a finding that placement with Mary would be detrimental to the children because she would not protect the children from the risk of ongoing domestic violence. Mary not only coached the children to lie, but became angry with Ta.B. when she told the truth. As a result, Ta.B. was struggling with anxiety. In addition, the record shows that in the past,

A.G. had displayed abusive behaviors toward Ta.B. Mary had flatly stated that she did not believe Ta.B.'s disclosures of physical abuse, even though Ta.B. had bruises that corroborated her description of the abuse and she was afraid of A.G. Thus, not only was there a substantial risk to the physical well-being of the children in Mary's care, there was also a significant risk to the emotional well-being of the children, particularly to Ta.B., in her care.

We conclude the court did not err when it found there would be a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being if returned home, and there were no reasonable means to protect the children's physical health without removing the children from the parents' custody. (§ 361, subd. (c)(1).)

DISPOSITION

The findings and orders are affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.